

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)

Interconnection and Resale Obligations)
Pertaining to)
Commercial Mobile Radio Services)

CC Docket No. 94-54

To: The Commission

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COMMENTS OF THE RURAL CELLULAR COALITION

The Rural Cellular Coalition ("RCC"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules, hereby respectfully submits these Comments in response to the Second Notice of Proposed Rule Making ("Second NPRM"), released by the Federal Communications Commission ("FCC or Commission") on April 20, 1995, in CC Docket No. 94-54. These Comments represent the concerns of small and rural cellular communications providers who will be affected by many of the proposed interconnection and resale obligations presented in this Notice.

I. STATEMENT OF INTEREST

RCC is comprised of rural cellular carriers providing service to rural America.¹ RCC's members serve over thirty licensed cellular areas across the country encompassing approximately 3 million people. The majority of the area served by RCC member companies is rural in nature. In the NPRM, the Commission tentatively concluded that it should not impose mandatory interconnection and roaming requirements on Commercial Mobile Radio Service ("CMRS")

¹ RCC member companies include: Cellular Mobile Systems of St. Cloud, CT Cube, Inc., CGKC&H No. 2 Cellular Limited Partnership, ENMR Telephone Cooperative, Inc., Leaco Rural Telephone Cooperative, Inc., Texas RSA No. 3 Limited Partnership, New Mexico 4 East RSA Partnership, New Mexico 6-II Partnership, Mid-Tex Cellular, LTD, Central Texas Telephone Cooperative, Inc. Georgia Independent RSA Nos. 7 & 10 Cellular Partnership and Adams Telephone Cooperative, Inc.

providers². The Commission also seeks comment on the extent resale obligations should be imposed on CMRS providers and has tentatively concluded that CMRS resale is in the public interest.³ RCC member companies will be affected by any decision concerning CMRS interconnection and resale adopted in this proceeding. Accordingly, RCC has a vested interest in the outcome of this proceeding.

II. COMMENTS

A. **RCC Supports the Commission's Laissez-Faire Approach To Interconnection Obligations.**

RCC applauds the Commission's recognition that it would be premature to impose an interconnection obligation on CMRS providers at this time. As the Commission recognizes, the development of these services is consumer-driven. As offerings such as Personal Communications Services ("PCS") and wide-area specialized mobile radio ("SMR") service are introduced and perfected, the market will determine whether and to what extent these services will interconnect.

At the present time, it is technologically infeasible and economically unreasonable to require CMRS providers to interconnect with other CMRS providers. Because many commercial mobile radio services are still evolving from a technological standpoint, it is impractical to expect providers of these services to also anticipate and design the mechanisms required for interconnection with other commercial mobile radio services, particularly in light of the fact that many commercial mobile radio services do not even exist yet. Such interconnection facilities would be temporary at best and likely to require periodic modifications as each CMRS provider adapts to meet consumer demands. Even the crudest initial interconnection set-up would require the service provider to incur unnecessary additional expense at a time when venture capital is already earmarked for the construction of the

² Second NPRM at para. 2.

³ Second NPRM at para. 3.

basic system and income from a stable customer base is still a projection, not a reality.

As the incumbents in the CMRS marketplace, cellular carriers would incur a disproportionate amount of the costs associated with developing interconnection facilities. Resellers and nascent services such as SMR and PCS will be able to take advantage of a cellular competitor's mandatory investment at "artificially low prices,"⁴ forcing cellular subscribers to bear the brunt of the cost. The ability of CMRS customers to access other CMRS via the landline network is a sufficient alternative to direct CMRS-to-CMRS interconnection until there is more than a theoretical need for such interconnection. Until the newer wireless services are built and operating, there should be little or no demand for direct interconnection. CMRS users, for the most part, will be seeking connection to users of the landline network. As various wireless services develop, each will attract a subscribership based on the features unique to that service. Many of these services will never require direct interconnection to other CMRS services (i.e., voice to data services). If and when direct CMRS-to-CMRS interconnection proves to be a desirable feature, marketplace forces will ensure that it is offered.

The Commission seeks comment on the definition of the relevant product market and relevant geographic market for purposes of determining when a CMRS provider has enough market share to harm its competitors by denying direct interconnection to its CMRS facilities.⁵ The Commission suggests that there are three possible relevant product markets: (1) local exchange, both landline and wireless; (2) all commercial mobile radio services; and (3) mobile radio services.⁶ The Commission

⁴ *In re* Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, Second Notice of Proposed Rule Making, CC Docket No. 94-54, released April 20, 1995, at ¶ 20 (citing McCaw Comments at 9-10) ("Second NPRM").

⁵ Second NPRM at paras. 32-34.

⁶ Second NPRM at para. 33.

also suggests that relevant geographic market should be considered a local market, and that geographic market may be either the service area or the license area.⁷ RCC believes that while it will eventually be important to devise meaningful definitions of relevant product and geographic markets, now may be too soon. It is prudent to wait until the newer commercial mobile radio services are operating and competing so that fungibility can be determined. It is possible that consumer patterns will indicate that certain services appeal to consumers for limited purposes, and dominance within those services would have little or no impact on the viability of differing services. Until the CMRS marketplace is more defined and mature, attempts to characterize markets would be merely speculative. As with the decision to regulate or not regulate CMRS interconnection, this decision best awaits more complete data.

B. A Provider's Decision To Offer Roaming Also Should Be Left To Market Forces.

RCC agrees with the Commission's tentative conclusion that cellular carriers and other CMRS providers should be encouraged but not required to enter into "interservice" intercarrier roaming agreements. As with interconnection, market forces will ensure that roaming capability is offered by CMRS providers. Indeed, in the cellular industry, many cellular intercarrier roaming agreements were reached despite the lack of an FCC requirement that cellular carriers enter into such agreements. As the Commission has recognized, roaming is a desirable consumer service. RCC agrees with Ameritech's assertion that "if CMRS providers wish to provide roaming service to their customers, it will be in their business interests to enter into the interconnection arrangements necessary to provide roaming service in the most 'user-friendly' fashion." Second NPRM at para. 51 (citing Ameritech Reply Comments at p. 5).

⁷ Second NPRM at para. 34.

Section 22.901 of the Commission's rules has successfully ensured cellular subscribers nationwide access to cellular service. Under that rule, cellular carriers must provide service upon request to all cellular subscribers in good standing, including roamers. 47 C.F.R. §22.901. Applying a similar requirement with respect to CMRS providers and customers will be sufficient to ensure that any CMRS subscriber can obtain CMRS service anywhere it is offered.

Under the Commission's proposed treatment of CMRS roaming, roamers would not be prevented from accessing cellular or other CMRS systems. They could simply provide the carrier in the area in which they wish to take advantage of roaming service with appropriate credit card or calling card validation information prior to obtaining service. Because of the prevalence of fraud in some major metropolitan areas such as New York City, carriers in these cities currently require credit card payment from roamers before providing service. Until fraud is under control, such a procedure is entirely appropriate for all CMRS carriers. CMRS providers serving roamers should not be required to assume the burden of fraud caused by subscribers to other carriers.

The Commission suggests that the advent of Signalling System Seven ("SS7") technology allows for the provision of ubiquitous, seamless roaming service. While SS7 may address many of the technical issues raised by the Commission, RCC must remind the Commission that many cellular carriers currently lack SS7 capability. In the event that the Commission does choose to impose some type of additional roaming requirements on CMRS providers, cellular carriers lacking SS7 capability should not be subject to the same technical requirements as carriers possessing such capability. Such an approach is consistent with the Commission's regulation of Caller ID⁸.

⁸ See Memorandum Opinion and Order on Reconsideration, "Second Report and Order and Third Notice of Proposed Rulemaking" CC Docket No. 91-281 (released May 5, 1995) at para. 101. (CMRS carriers who are unable to pass Calling Party Number (CPN) because they lack SS7 technology do not have to comply with CPN rules).

The Second NPRM asks for comment on the relationship between roaming and direct interconnection. For the same reasons discussed in Section A, supra, direct interconnection is unnecessary for roaming. As with roaming service currently offered over cellular networks, roamers can continue to place calls utilizing the landline network.

C. The Same Resale Obligations Must Be Imposed On All CMRS Licensees.

RCC agrees with the Commission's tentative conclusion that all CMRS providers should be subject to the same resale obligations currently imposed on cellular licensees. Section 332 of the Communications Act of 1934, as amended, mandates that all CMRS providers be afforded equivalent regulatory treatment. Regulatory parity thus requires that all CMRS providers be subject to the same resale obligations. Imposing resale obligations currently applied to cellular carriers on all CMRS providers not only serves the congressionally mandated interest of regulatory parity, it serves the public interest as well. CMRS resale will foster competition in the provision of wireless services. The proven success of cellular resale demonstrates the competitive benefits of requiring the resale of wireless communications services. Allowing CMRS providers to avoid resale obligations, as some commenters suggest, will only serve to delay the advent of full competition in new wireless communications services markets such as PCS.

RCC also agrees with the Commission's conclusion that any volume discount available to a CMRS provider's customers also be available to resellers on the same terms and conditions offered to retail customers. However, as the Cellular Telecommunications Industry ("CTIA") noted in its prior comments, this does not mean that carriers should be required to offer bulk rates to resellers. Resellers may only take advantage of bulk rates to the extent that such rates are offered to the carrier's other customers.

With respect to resale to facilities-based carriers, the Commission has proposed to limit the time period during which a CMRS provider will be required to permit another facilities-based⁹ CMRS provider to resell its services. RCC agrees with the Commission that a regulatory guarantee of a right to resell its facilities-based competitor's services provides a disincentive to rapid build out of new networks, yet recognizes the public interest benefits of resale as a tool for "jump starting" competition. RCC believes that these interests may be properly balanced through the imposition of a five year limit on mandatory resale to facilities-based competitors. A five year limit, which is equivalent to that imposed on wireline cellular licensees with respect to resale to their nonwireline competitors, will afford new CMRS licensees a headstart in providing service, while retaining an incentive for those licensees to meet their mandatory buildout requirements. Under RCC's proposal, at the end of the five year period, facilities-based competitors would still be permitted to resell subject to negotiation with the carrier whose service they would be reselling.

Reciprocity must be a key component of any resale requirement. If a PCS provider can provide PCS and resell cellular service within the same market during a five year "buildout" period, cellular carriers must also be permitted to offer both services to its customers by reselling the PCS service. Without a guaranteed right to resell all other CMRS services, facilities-based cellular carriers will be put at a competitive disadvantage with respect to their PCS and SMR competitors.¹⁰ Such a result would be contradictory to the notion of regulatory parity dictated by Section 332 of the Communications Act.

⁹ RCC proposes that "facilities-based" CMRS providers (or "facilities-based competitors") be defined as entities holding CMRS licenses.

¹⁰ In urging the Commission to ensure facilities-based cellular carriers' ability to resell competing CMRS service, RCC is not suggesting that cellular carriers would be allowed to resell the service of competing cellular carriers within their market beyond the five year fill-in period authorized under current law.

The Second NPRM seeks comment on whether the Commission should make number transferability requirements a part of its CMRS resale policy. RCC opposes any suggestion that number transferability be mandated. While RCC recognizes that number transferability may be beneficial, the issue of transferability in particular instances should be subject to negotiation between the carrier and the reseller. Such an arrangement is consistent with the transferable NXX scheme currently in place for cellular resale. See Cincinnati SMSA Limited Partnership, Memorandum Opinion and Order, Mimeo No. 4124 (Com. Car. Bur., released April 30, 1985).

Because NXX codes may only be transferred in their entirety, resellers of cellular service who wish to transfer only a portion of numbers in an NXX block should not be afforded a right to force a cellular carrier to transfer an entire NXX code. To give resellers such a right would not only deplete numbers required by cellular carriers for future growth, it would give resellers a benefit for which they have not paid. Accordingly, should the Commission decide that imposing some sort of number transferability requirement is in the public interest, it should only apply to resellers currently reselling an entire NXX code who wish to transfer that code.

D. The Commission Must Not Obligate Cellular Providers to Permit Resellers to Install Switching Equipment

The RCC strongly opposes any proposal for a regulatory mandate to allow switch-based resale. Switch-based resale is not technically or financially viable. The National Cellular Resellers Association ("NCRA"), Cellular Service, Inc./ComTech, Inc. ("CSI/ComTech") and the California Public Utility Commission ("CPUC") contended in their prior comments that requiring cellular providers to permit resellers to interconnect their switches with those of the cellular provider is in the public interest.¹¹ Contrary to the assertions of NCRA, CSI/ComTech at CPUC requiring cellular licensees to open up their switches for such interconnection would be detrimental to the public

¹¹ Second NPRM at paragraph 78, note 162.

interest by imposing costs to modify and update switches. In addition, such a requirement would potentially require the purchase of new switches to accommodate the interconnection of potentially numerous reseller switches. These costs, in turn, would be passed on to resellers and eventually to subscribers. The costs associated with disaggregating cellular switching and transport functions are simply not economically justifiable.

Cellular carriers are not monopolies nor do they control bottleneck facilities, and as such should not be compared to local exchange carriers for purposes of determining whether switched-based resale is appropriate. By opening up their switches to switch-based resale, cellular carriers run the risk of degrading their networks. The inability to control access to the switch or control switch capacity because of demand placed on the cellular switch by potentially numerous reseller-based interconnected switches will lower the quality of service to which cellular subscribers have become accustomed.

In view of the number of facilities-based CMRS providers anticipated in a market (i.e., two cellular carriers, potentially six PCS carriers and numerous SMR providers), switch-based cellular resale is neither necessary nor desirable. RCC is not opposed to individually negotiated arrangements whereby cellular resellers and cellular licensees agree to interconnect their facilities. However, regulations that force cellular licensees to enter into such arrangements would result in an uneven playing field. Mandating reseller interconnection for mobile services on the other hand, would allow a cellular reseller to provide full cellular service to its customers without the regulatory constraints imposed on the cellular licensee. The ability to operate a cellular system without the need for a license would provide resellers with an incredible advantage over their facilities-based competitors. For example, switch-based cellular resellers would presumably be permitted to operate without being subject to spectrum caps, broadband PCS cross-ownership restrictions, reporting requirements, and annual user fees. Clearly, allowing unlicensed cellular resellers to provide service

functionally equivalent to licensed cellular service without any public interest obligations would run contrary to the spirit of regulatory parity -- the heart of commercial mobile service regulation. Accordingly, RCC believes that mandatory interconnection among cellular resellers and CMRS providers should not be imposed.

III. CONCLUSION

As the Commission has correctly recognized, it is inadvisable to impose a general interconnection requirement on CMRS providers or regulate the manner in which resale services are offered. Market forces will work to ensure that CMRS interconnection and resale services are implemented in the most economically and technically feasible manner possible. Similarly, limiting the amount of time that CMRS providers are required to offer facilities-based resellers resale capacity to five years will promote competition by encouraging build out of PCS and SMR services. Accordingly, RCC respectfully urges the Commission to adopt its recommendations as proposed herein.

Respectfully submitted,

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